Supreme Court of the United States.

No. 94.—October Term, 1906.

Chattanooga Foundry and Pipe Works and South Pittsburg Pipe Company, Plaintiffs in Error, *vs.* City of Atlanta.	In Error to the United States Circuit Court of Appeals for the Sixth Circuit.

[December 3, 1906.]

Mr. Justice Holmes delivered the opinion of the Court.

This is an action by the city of Atlanta, (Georgia,) against two Tennessee corporations, members of the trust or combination held unlawful in *Addyston Pipe and Steel Co.* v. *United States*, 175 U. S. 211. The object of the suit is to recover threefold damages for alleged injury to the city "in its business or property" under § 7 of the Act of July 2, 1890, c. 647. (26 Stat. 209.) The alleged injury is that the city, being engaged in conducting a system of waterworks, and wishing to buy iron water pipe, was led, by reason of the illegal arrangements between the members of the trust, to purchase the pipe from the Anniston Pipe and Foundry Company, an Alabama corporation, at a price much above what was reasonable or the pipe was worth. The purchase was made after a simulated competition, at a price fixed by the trust and embracing a bonus to be divided among the members. The plaintiffs in error demurred to the declaration, and pleaded not guilty, and that the action accrued more than one year and more than three years before the suit was brought, relying upon §§ 2772 and 2773 of the Code of Tennessee, the Eastern District of Tennessee being the district in which the suit was brought. The demurrer to the declaration was overruled and the plaintiff had a verdict and judgment in the Circuit Court. The verdict was for the difference between the price paid and the market or fair price that the city would have had to pay under natural conditions had the combination been out of the way, together with an attorney's fee. The judgment trebled the damages. It was affirmed by the Circuit Court of Appeals, the plaintiffs in error having saved their rights at every stage. The discussions of the law took place before the jury trial was reached. They will be found in 127 Fed. Rep. 23 and 101 Fed. Rep. 900. For our purposes it seems unnecessary to state the case at greater length.

The facts gave rise to a cause of action under the Act of Congress. The city was a person within the meaning of § 7 by the express provision of § 8. It was injured in its property, at least, if not in its business of furnishing water, by being led to pay more than the worth than the pipe. A person whose property is diminished by a payment of money wrongfully induced is injured in his property.—The transaction which did the wrong was a transaction between parties in different States, if that be material. The fact that the defendants and others had combined with the seller led to the excessive charge, which the seller made in the interest of the trust by arrangement with its members, and which the buyer was induced to pay by the semblance of competition, also arranged by the members of the trust. One object of the combination was to prevent other producers than the Anniston Pipe and Foundry Company, the seller, from competing in sales to the plaintiff.—There can be no doubt that Congress had power to give an action for damages to an individual who suffers by breach of the law. *Montague* v. *Lowry*, 193 U. S. 38. The damage complained of must almost or quite always be damage in property, that is, in the money of the plaintiff, which is owned within some particular State. In other words, if Congress had power to make the acts which led to the damage illegal, it could authorize a recovery for the damage, although the latter was suffered wholly within the boundaries of one State.—Finally, the fact that the sale was not so connected in its terms with the unlawful combination as to be unlawful, *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, in no way contradicts the proposition that the motives and inducements to make it were so affected by the combination as to constitute a wrong. In most cases where the result complained of as springing from a tort is a contract, the contract is lawful, and the tort goes only to the motives which led to its being made, as when it is induced by duress or fraud.

The limitation of five years in Rev. Sts. § 1047, to any "suit or prosecution for any penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States," does not apply. The construction of the phrase 'suit for a penalty,' and the reasons for that construction have been stated so fully by this Court that it is not necessary to repeat them. Indeed the proposition hardly is disputed here. *Huntington* v. *Attrill*, 146 U. S. 657, 668. *Brady* v. *Daly*, 175 U. S. 148, 155, 156.

Thus we come to the main question of the case, namely, which limitation under the laws of Tennessee is applicable, the matter being left to the local law by the silence of the Statutes of the United States. Rev. Sts. 721. *Campbell* v. *Haverhill*, 155 U. S. 610. The material provisions of the Tennessee Code are as follows: By Article 2769, (Shannon, 4466,) all civil actions are to be commenced within the periods prescribed, with im-

material exceptions. By Article 2772, (Shannon, 4469,) actions, among others, "for statute penalties, within one year after cause of action accrued." By 2773, (Shannon, 4470,) "Actions for injuries to personal or real property; actions for the detention or conversion of personal property, within three years from the accruing of the cause of action." By 2776, (Shannon, 4473,) certain actions enumerated, "and all other cases not expressly provided for, within ten years after the cause of action accrued." The Circuit Court of Appeals held that the case did not fall within 2772 or 2773, but only within 2776, and therefore was not barred. Although the decision is appealed from, as this question involves the construction of of local law we cannot but attribute weight to the opinion of the judge who rendered the judgment, in view of his experience upon the Supreme Court of Tennessee. And although doubts were raised by the argument, we have come to agree with his interpretation in the main.

As to the article touching actions for statute penalties, notwithstanding some grounds for distinguishing it from Rev. Sts. § 1047, which were pointed out, so far as this liability under the laws of the United States is concerned we must adhere to the construction of it which we already have adopted.—The chief argument relied upon is that this suit is for injury to personal property, and so within Article 2773. It was pressed upon us that formerly the limitations addressed themselves to forms of action, that actions upon the case, such as this would have been, were barred in three years, following St. 21 Jac. 1, c. 21, § 3, and that when a change was necessitated by the doing away with the old forms of action, it is not to be supposed that the change was intended to affect the substance, or more than the mode of stating the time allowed. Of course, it was argued also that this was an injury to property, within the plain meaning of the words. But we are satisfied, on the whole, and in view of its juxtaposition with detention and conversion, that the phrase has a narrower intent. It may be that it has a somewhat broader scope than was intimated below, and that some wrongs are within it besides physical damage to tangible property. But there is a sufficiently clear distinction between injuries to property and 'injured in his business or property,' the latter being the language of the act of Congress. A man is injured in his property when his property is diminished. He would not be said to have suffered an injury to his property unless the harm fell upon some object more definite and less ideal than his total wealth. A trade mark, or a trade name, or a title, is property, and is regarded as an object capable of injury in various ways. But when a man is made poorer by an extravagant bill we do not regard his wealth as a unity, or the tort, if there is one, as directed against that unity as an object. We do not go behind the person of the sufferer. We say that he has been defrauded or subjected to duress, or whatever it may be, and stop

there. It was urged that the opening article to which we have referred expressed an intention to bar all civil actions, but that hardly helps the construction of any particular article following, since the dragnet at the end, 2776, catches all cases not 'expressly provided for.' On the whole case we agree with the court below.

Judgment affirmed.

The CHIEF JUSTICE and Mr. Justice PECKHAM dissent.

True copy.

Test:

Clerk Supreme Court, U. S.